

§ 380.13–380.19

of the obligations or liabilities of the subsidiary or affiliate.

(5) A “*qualified transferee*” means any bridge financial company or any third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding).

(6) A “*successor*” of a bridge financial company means

(i) A company into which the bridge financial company is converted by way of incorporation under the laws of a State of the United States; or

(ii) The surviving company of a merger or consolidation of the bridge financial company with another company (whether before or after the conversion (if any) of the bridge financial company).

(c) *Adequate protection.* The Corporation as receiver for a covered financial company may provide adequate protection with respect to a covered financial company’s support of the obligations and liabilities of a subsidiary or an affiliate pursuant to paragraph (a)(2)(ii) of this section by any of the following means:

(1) Making a cash payment or periodic cash payments to the counterparties of the contract to the extent that the failure to cause the assignment and assumption of the covered financial company’s support and related assets and liabilities causes a loss to the counterparties;

(2) Providing to the counterparties a guaranty, issued by the Corporation as receiver for the covered financial company, of the obligations of the subsidiary or affiliate of the covered financial company under the contract; or

(3) Providing relief that will result in the realization by the counterparty of the indubitable equivalent of the covered financial company’s support of such obligations or liabilities.

(d) *Notice of transfer of support or provision of adequate protection.* If the Corporation as receiver for a covered financial company transfers any support and related assets and liabilities of the covered financial company in accordance with paragraph (a)(2)(i) of this section or provides adequate protection in accordance with paragraph (a)(2)(ii)

12 CFR Ch. III (1–1–14 Edition)

of this section, it shall promptly take steps to notify contract counterparties of such transfer or provision of adequate protection. Notice shall be given in a manner reasonably calculated to provide notification in a timely manner, including, but not limited to, notice posted on the Web site of the Corporation, the covered financial company or the subsidiary or affiliate, notice via electronic media, or notice by publication. Neither the failure to provide actual notice to any party nor the lack of actual knowledge on the part of any party shall affect the authority of the Corporation to enforce any contract or exercise any rights or powers under this section.

[77 FR 63214, Oct. 16, 2012]

§ 380.13–380.19 [Reserved]

Subpart B—Priorities

SOURCE: 76 FR 41642, July 15, 2011, unless otherwise noted.

§ 380.20 [Reserved]

§ 380.21 Priorities.

(a) The unsecured amount of allowed claims shall be paid in the following order of priority:

(1) Repayment of debt incurred by or credit obtained by the Corporation as receiver for a covered financial company, provided that the receiver has determined that it is otherwise unable to obtain unsecured credit for the covered financial company from commercial sources.

(2) Administrative expenses of the receiver, as defined in § 380.22, other than those described in paragraph (a)(1) of this section.

(3) Any amounts owed to the United States, as defined in § 380.23 (which is not an obligation described in paragraphs (a)(1) or (2) of this section).

(4) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in paragraph (a)(9) of this section), but only to the extent of \$11,725 for each individual (as adjusted for inflation in accordance with paragraph (b) of this section) earned within 180 days before

Federal Deposit Insurance Corporation

§ 380.22

the date of appointment of the receiver.

(5) Contributions owed to employee benefit plans arising from services rendered within 180 days before the date of appointment of the receiver, to the extent of the number of employees covered by each such plan multiplied by \$11,725 (as adjusted for inflation in accordance with paragraph (b) of this section); less the sum of (i) the aggregate amount paid to such employees under paragraph (a)(4) of this section, plus (ii) the aggregate amount paid by the Corporation as receiver on behalf of such employees to any other employee benefit plan.

(6) Any amounts due to creditors who have an allowed claim for loss of setoff rights as described in § 380.24.

(7) Any other general or senior liability of the covered financial company (which is not a liability described under paragraphs (a)(8), (9) or (11) of this section).

(8) Any obligation subordinated to general creditors (which is not an obligation described under paragraphs (a)(9) or (11) of this section).

(9) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, that is owed to senior executives and directors of the covered financial company.

(10) Post-insolvency interest in accordance with § 380.25, provided that interest shall be paid on allowed claims in the order of priority of the claims set forth in paragraphs (a)(1) through (9) of this section.

(11) Any amount remaining shall be distributed to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company, in proportion to their relative equity interests.

(b) All payments under paragraphs (a)(4) and (a)(5) of this section shall be adjusted for inflation in the same manner that claims under 11 U.S.C. 507(a)(1)(4) are adjusted for inflation by the Judicial Conference of the United States pursuant to 11 U.S.C. 104.

(c) All unsecured claims of any category or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full or provision made for such payment before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a particular category or priority of claims in full, then distributions to creditors in such category or priority shall be made *pro rata*. A subordination agreement is enforceable with respect to the priority of payment of allowed claims within any creditor class or among creditor classes to the extent that such agreement is enforceable under applicable non-insolvency law.

§ 380.22 Administrative expenses of the receiver.

(a) The term “administrative expenses of the receiver” includes those actual and necessary pre- and post-failure costs and expenses incurred by the Corporation in connection with its role as receiver in liquidating the covered financial company; together with any obligations that the receiver for the covered financial company determines to be necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company. Administrative expenses of the Corporation as receiver for a covered financial company include:

(1) Contractual rent pursuant to an existing lease or rental agreement accruing from the date of the appointment of the Corporation as receiver until the later of

(i) The date a notice of the disaffirmance or repudiation of such lease or rental agreement is mailed, or

(ii) The date such disaffirmance or repudiation becomes effective; provided that the lesser of such lease is not in default or breach of the terms of the lease.

(2) Amounts owed pursuant to the terms of a contract for services performed and accepted by the receiver after the date of appointment of the receiver up to the date the receiver repudiates, terminates, cancels or otherwise discontinues such contract or notifies the counterparty that it no longer accepts performance of such services;